


MONROE D. KIAR
TOWN ATTORNEY
TOWN OF DAVIE
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Davie, Florida 33314
(954) 584-9770

TOWN ATTORNEY REPORT

DATE: August 31, 2000
FROM: Monroe D. Kiar 
RE: Litigation Update

1. Sunrise Litigation - Representatives of the Town of Davie and the City of Sunrise met for negotiations regarding the possible purchase and sale of the Sunrise utility lines and appurtenant facilities located within Davie on August 21, 2000. The general consensus of the members of the Davie negotiation team was that it was a fruitful initial meeting. Jerry Chiocca of Rachlin Cohen has written to Attorney Phil Gildan for an initial request of some of the preliminary documents needed by the Town in its evaluations. The representatives of the Town of Davie and the City of Sunrise are scheduled to meet again in September.

2. **Coastal Carting Ltd., Inc. v. City of Sunrise, et al (includes Town of Davie as a defendant)** - Mr. Johnson has been advised that the Resource Recovery Board has agreed to dismiss the various municipalities, including the Town of Davie, but as of this date, Mr. Johnson has not yet received a signed Stipulation from Plaintiff's attorney dismissing the municipalities. A Status Conference in this case is set for September 29, 2000 at 10:00 A.M. Should Mr. Johnson have not received the Stipulation of Dismissal before that date, he will then attend the Status Conference before the United States District Court Judge and attempt to have the municipalities dismissed at that time.

3. **MVP Properties, Inc.** - According to our outside attorney, Michael Burke, when this matter was previously handled by the prior Town Attorney, Judge Miller quashed the Town's denial of the request by MVP that it vacate a public road and allow privatization of the road. MVP is now contending that the Town's ordinance prohibiting entrance gates is arbitrary and capricious as it effects their particular development and they are claiming that when the City prohibited them from installing an entrance gate to the front of their private road, that their development was thwarted and they lost revenues. A Pretrial Conference is scheduled in this case for February 16, 2001. It is anticipated that the trial will be in March or April, 2001. I have requested that Mr. Burke forward to me copies of all significant pleadings, including Judge Miller's Order, any appellate briefs filed by either Mr. Webber's office or by counsel for MVP, and any case law that he might have with regard to the prohibition against privatization of roads.

As I have not received this material from Mr. Burke, I have accordingly, written to Mr. Webber's office requesting same. I have also verbally made this request to Mr. Webber personally.

4. **Street Vendors Ordinance** - As previously indicated, after extensive review of the applicable case law, a Memorandum was issued by this Town Attorney suggesting that a street ordinance, if properly drawn, can be successfully upheld if constitutionally challenged in court. A copy of the Invoice from the expert in the amount of \$5,000.00 hired by the prior Town Attorney and with the authorization of the Council has been forwarded to the Town for payment.

5. **LDG Corporation** - As previously indicated, the Court issued an Order determining that the Town of Davie properly required LDG Corporation to obtain a variance as a result of the DOT's taking. The Court also left undisturbed, the conditions imposed by the Town of Davie for the granting of the variance. Accordingly, the Town of Davie can require LDG to construct the improvements as set forth in the variance and LDG can seek recovery of these costs from the DOT. A mediation was attended on August 1, 2000 by Mr. Burke and Mr. Kutney on behalf of the Town of Davie, but the DOT and LDG Corporation were unable to agree as to the amount of damages to be awarded to LDG against the DOT. LDG has since subpoenaed Mr. Mark Kutney and both the undersigned and Mr. Burke are attempting to gain his release from the authority of the Subpoena in order to conserve on his valuable time, if his deposition is not necessary.

6. **Orandello** - The Temporary Injunction issued by the Circuit Court restraining Mr. Orandello from selling ice cream in Davie remains in effect. Further, Code Enforcement advises that the monetary Judgment is now in excess of \$100,000.00. Mr. Orandello in a telephone call to the Town Attorney, indicated that one of the Broadway Joe's trucks had been stopped and issued a citation by the Davie Police last week for allegedly selling ice cream. Mr. Orandello contends the driver was not selling ice cream. Mr. Orandello reiterated his offer of \$20,000.00 to settle his case with the Town of Davie. When asked if he would agree to a stipulation also prohibiting his future sale of ice cream in the Town of Davie as part of any settlement agreement, he indicated he would not. A further detailed status evaluation will be presented at the Town Council Meeting on September 6, 2000.

7. **142nd Avenue, Kuegler v. Town of Davie** - The Plaintiff's attorney served a series of Expert Witness Interrogatories upon the undersigned and these were promptly completed by our expert witness and our responses were timely filed with the Court and served upon the Plaintiff's attorney.

8. **Cummings** - The Plaintiff's attorney served upon the Town Attorney the Plaintiff's Notice of Service of Interrogatories and First Set of Interrogatories to Defendant, Town of Davie. These have been forwarded to Interim Town Engineer, John Doherty, for his review and assistance in completing the Interrogatories so that our response can be filed in a timely manner.

9. **Davie v. Statewide Transportation & Recovery Services, Inc.** - A Judgment was previously obtained against the Defendant. There has been some recovery made in this case and we are attempting to locate additional assets of the corporation.

10. **ROHO Flamingo - ICE Plat, (Control #000104)** - This Town Attorney has made revisions to the initial draft of the Complaint prepared previously by Mr. Webber and sent a copy of same to the attorney for ROHO. The current Town Attorney has also made revisions to the Stipulation previously prepared by Mr. Webber or by the attorney for ROHO. The Stipulation has also been sent to the attorney for his review and requesting that it be executed by the principals of ROHO Flamingo and thereafter, returned to the undersigned for presentment to the Town Council.

11. **Seventy-Five East, Inc. v. Town of Davie** - Our outside attorney, Mr. Michael Burke, has filed the Town's response to the Complaint filed by the Plaintiff. He anticipates the Plaintiff will then file a reply brief and thereafter, the Court will order oral argument. There are two pending motions filed by the Plaintiff. One is to consolidate this case with Griffin-Orange North, Inc. vs. Town of Davie litigation, and the second is for oral argument before a three judge panel.

12. **Griffin-Orange North, Inc. v. Town of Davie** - Mr. Burke has filed his response to the Complaint. He anticipates the Plaintiff will now file a reply brief and thereafter, oral argument will be scheduled by the Court.

13. **Department of Community Affairs v. Town of Davie** - Prior to the final hearing scheduled in this matter, a tentative agreement was reached as set forth in the letter of intent, copies of which were previously distributed at the last Council Meeting. The DOT is preparing a proposed Settlement Agreement as well as a Compliance Agreement for review by the Town of Davie.

14. **Ordonez, et al v. Town of Davie** - This is a lawsuit naming the Town of Davie, its police officers, its former Chief of Police and one of its elected officials as Defendants. This matter is being vigorously defended by Attorney Michael Burke. The plaintiffs are alleging that they were unlawfully arrested, detained and battered and that their rights were violated by the Davie Police Department.

MDK/gmv

TOWN ATTORNEY'S OFFICE

TOWN OF DAVIE, FLORIDA

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Monroe D. Kiar

Town Attorney

August 31, 2000

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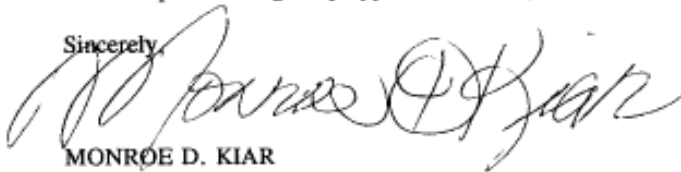
Re: MVP Properties, Inc. v. Town of Davie
Case Number 99-7590-CIV-ZLOCH/Seltzer

Dear Mr. Webber:

Will you please provide to me copies of any appellate briefs filed by either your office or by the attorneys for MVP Properties in this litigation, as well as any case law that you might have with regard to the prohibition against privatization of roads.

Your cooperation is greatly appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read "Monroe D. Kiar", written over the typed name.

MONROE D. KIAR

MDK/gmv

cc: Mayor Harry Venis and Councilmembers